United States Department of Labor
Employees' Compensation Appeals Board

I.G., Appellant	)	
and	)	**Docket No. 20-0034**
	)	**Issued: April 23, 2021**
U.S. POSTAL SERVICE, MAPLEWOOD POST OFFICE, Maplewood, NJ, Employer	)	

Appearances:
James D. Muirhead, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 3, 2019 appellant, through counsel, filed a timely appeal from an April 16, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[3]

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

[3] The Board notes that, following the April 16, 2019 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met her burden of proof to establish a recurrence of disability, commencing May 5, 2017, causally related to her accepted February 19, 2014 employment injury.

FACTUAL HISTORY

On February 21, 2014 appellant, then a 38-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on February 19, 2014 she injured her right ankle when she slipped on steps while in the performance of duty. She stopped work on February 20, 2014 and returned to part-time, limited-duty work for four hours per day on May 12, 2014. OWCP accepted appellant's claim for right ankle sprain.[4] It paid wage-loss compensation on the supplemental rolls and placed appellant on the periodic rolls, effective December 14, 2014. On February 3, 2016 appellant returned to full-time, modified duty.

In an October 5, 2016 letter, Dr. Eric K. Reynolds, a podiatrist, held appellant off work until October 31, 2016. He completed a duty status report (Form CA-17), which noted a February 19, 2014 date of injury and diagnosis of right foot/ankle fasciitis. Dr. Reynolds indicated that appellant could work full time with restrictions of lifting and carrying up to four hours a day, driving a vehicle and standing up to three hours a day, sitting and climbing up to two hours a day, and bending, stooping, twisting, and pulling/pushing up to one hour a day. He also noted that appellant was unable to work under extreme weather conditions due to her injury.

On October 24, 2016 appellant accepted a modified assignment offer for a full-time city carrier assistant position. The duties of the position included lobby assistance up to one hour a day, casing routes up to one and a half hours a day, and delivering express/parcels and answering telephones/light office job up to two hours a day. The physical requirements of the position required lifting less than 35 pounds up to 30 minutes a day, repetitively moving the wrist and standing up to 2 hours a day, walking up to 2 to 3 hours a day, and sitting up to 3 to 4 hours a day.

On June 20, 2017 appellant filed a Form CA-2a claiming disability from work commencing May 5, 2017. She described that on May 5, 2017 her supervisor changed her work orders. Appellant alleged that she experienced right foot pain due to work orders that were not in agreement with her doctor's restrictions. On the reverse side of the claim form a representative for the employing establishment indicated that on October 31, 2016 appellant returned to limited duty with restrictions of "no work under 50 degrees."

Appellant submitted letters dated April 17 and 27, 2017 by Dr. Reynolds who reported that appellant was unable to work in extreme weather conditions, including snow, rain, and heat waves, and in nothing below 50 or over 80 degrees. Dr. Reynolds explained that appellant must follow doctor restrictions due to constant swelling and bruising.

[4] Appellant continued to receive medical treatment and filed several notices of recurrence (Forms CA-2a) claiming that she sustained recurrences of disability on July 15, 2014 and June 22, 2016. OWCP accepted the July 15, 2014 recurrence claim and denied the June 22, 2016 recurrence claim.

In a May 22, 2017 letter, Dr. Reynolds reported that appellant was incapacitated as of May 6, 2017 due to a preexisting injury stemming from a February 19, 2014 employment injury.

In a June 22, 2017 development letter, OWCP provided appellant with the definition of a recurrence of disability and requested that appellant submit additional factual and medical evidence supporting that she was disabled from employment for the claimed period. It provided a questionnaire for completion and specifically requested that she submit a physician's opinion explaining how the claimed disability was due to the February 19, 2014 employment injury. OWCP afforded appellant 30 days to provide the requested evidence. A similar letter of even date was sent to the employing establishment.

On June 22, 2017 appellant submitted a narrative statement to OWCP dated June 2, 2017, wherein she related that, when she returned to work on October 31, 2016, she had restrictions of not working outside below 50 degrees. She alleged that she was given work intermittently depending on if work was available and worked until May 5, 2017. Appellant asserted that work orders began to change prior to this date because no work was available within her restrictions.

By decision dated July 24, 2017, OWCP denied appellant's claim for a recurrence of disability. It indicated that she had not submitted sufficient evidence to establish that she had a return or increase of disability due to a change in or withdrawal of her modified-duty assignment.

In a September 21, 2017 letter, Dr. Reynolds indicated that appellant was treated for chronic right foot and ankle pain due to a work-related injury. He completed a Form CA-17, which indicated that she could work full-time, modified duty.

By decision dated November 22, 2017, OWCP expanded acceptance of her claim to include right ankle sprain/tear of extensor halluces longus, right ankle peroneal nerve tendinopathy, right plantar fasciitis, and right tibial anterior tendinopathy.[5]

On January 23, 2018 appellant filed a claim for wage-loss compensation (Form CA-7) for the period August 5 through 11, 2017. On the reverse side of the CA-7 form M.T., a health and resource management specialist for the employing establishment, indicated that appellant returned to limited duty on August 7, 2017 and was sent home because no more work was available. Appellant additionally submitted CA-7 forms claiming wage-loss compensation for continued disability. She indicated on the time analysis forms (Form CA-7a) that her reason for using leave was "no work available."

In an undated letter, appellant alleged that on May 5, 2017 her supervisor did not want to follow her work restrictions. She indicated that on August 7, 2017 she worked for four hours before the Postmaster sent her home because no work was available. Appellant asserted that there was still no work available for her.

[5] In an October 23, 2017 report, Dr. Timothy Henderson, a Board-certified orthopedic surgeon and second-opinion examiner, indicated that appellant's current diagnoses connected to the February 19, 2014 employment injury included right ankle inversion injury with sprain/tear of the extensor halluces longus tendon, tenosynovitis, and tendinopathy of the peroneal tendons, and the tibialis anterior tendon and plantar fasciitis. He also reported that appellant was able to return to work on October 31, 2016 and could currently work full-time, modified duty.

On February 20, 2018 appellant requested reconsideration.

In letters dated October 30, 2017 through January 29, 2018, Dr. Reynolds recounted that appellant still had symptoms of chronic right foot and ankle pain due to a work-related injury. He noted that appellant should continue with her current treatment.

In a March 28, 2018 letter, Dr. Reynolds indicated that appellant had been incapacitated since May 5, 2017 due to a preexisting February 19, 2014 employment injury. He explained that on May 8, 2017 appellant continued to have symptoms, including right foot pain, bruising, and swelling. Dr. Reynolds advised that appellant was currently able to work eight hours per day with one hour of walking and standing.

On May 16, 2018 OWCP requested that the employing establishment confirm whether there was work available for appellant from May 5 through August 7, 2017. It also requested confirmation about whether appellant was sent home after four hours of work on August 7, 2017 and whether her work demands exceeded her restrictions.

In a May 16, 2018 letter, M.T., an employing establishment health and resource management specialist, recounted that appellant accepted a modified job offer on October 13, 2016 and subsequently presented with worsened conditions on October 24, 2016. She explained that on November 25, 2016 appellant's supervisor noted that appellant did not report to work due to the weather. M.T. reported that on May 5, 2017 appellant completed a full workday and, at the end of her tour, she argued with management and requested that they abide with her "weather restrictions." She confirmed that there were no changes to appellant's existing job offer or duties and that there was work available from May 6 through August 7, 2017. M.T. noted that there continued to be work available for appellant.

In a May 21, 2018 decision, OWCP denied modification of the July 24, 2017 decision.

On June 1, 2018 appellant, through counsel, requested reconsideration. She reiterated that, when she finished her shift on May 5, 2017, she was told that the employing establishment no longer had work for her based on her restrictions. Appellant indicated that she reached out to the injury compensation specialist on several occasions and was told to stay home because there was no work available.[6]

Appellant submitted an August 6, 2018 prescription note and report from Dr. Reynolds regarding her current medical treatment for her right foot injury.

By decision dated January 9, 2019, OWCP denied modification of the May 21, 2018 decision.

On January 18, 2019 appellant, through counsel, requested reconsideration. Counsel alleged that, according to a time analysis form (Form CA-7a) dated January 23, 2018, appellant

[6] On June 29, 2018 appellant filed another Form CA-2a claiming that she sustained a recurrence of disability on August 7, 2017. In a January 7, 2019 letter, OWCP informed her that the evidence of record indicated that this recurrence claim was the same recurrence from May 5, 2017 since the limited-duty job offer did not change. It advised appellant to refer to the May 21, 2018 decision and follow her appeal rights.

was sent home on August 7, 2017 because no work was available. He also argued that the May 5, 2017 and August 7, 2017 dates should be treated as two separate recurrences of disability.

In an April 16, 2019 decision, OWCP denied modification of the January 9, 2019 decision.

LEGAL PRECEDENT

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which resulted from a previous compensable injury or illness and without an intervening injury or new exposure in the work environment.[7] This term also means an inability to work because a light-duty assignment made specifically to accommodate an employee's physical limitations, and which is necessary because of a work-related injury or illness, is withdrawn or altered so that the assignment exceeds the employee's physical limitations.[8]

OWCP procedures provide that a recurrence of disability includes a work stoppage caused by a spontaneous material change in the medical condition demonstrated by objective findings. The change must result from a previous injury or occupational illness rather than an intervening injury or new exposure to factors causing the original illness. It does not include a condition that results from a new injury, even if it involves the same part of the body previously injured.[9]

When an employee who is disabled from the job he or she held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence of record establishes that he or she can perform the limited-duty position, the employee has the burden of proof to establish by the weight of the reliable, probative, and substantial evidence a recurrence of total disability and to show that he or she cannot perform such limited-duty work. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature of extent of the limited-duty job requirements.[10]

An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of proof to establish by the weight of the substantial, reliable, and probative evidence that the disability for which he or she claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that, for each period of disability claimed, the disabling condition is causally related to employment

[7] 20 C.F.R. § 10.5(x); *T.J.*, Docket No. 18-0831 (issued March 23, 2020); *J.D.*, Docket No. 18-1533 (issued February 27, 2019).

[8] *Id.*

[9] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2 (June 2013); *F.C.*, Docket No. 18-0334 (issued December 4, 2018).

[10] *J.S.*, Docket No. 19-1402 (issued November 4, 2020); *S.D.*, Docket No. 19-0955 (issued February 3, 2020); *Terry R. Hedman*, 38 ECAB 222 (1986).

injury, and supports that conclusion with medical reasoning.[11] Where no such rationale is present, the medical evidence is of diminished probative value.[12]

ANALYSIS

The Board finds that the case is not in posture for decision.

The record reflects that on October 24, 2016 appellant accepted a modified assignment offer for a full-time city carrier assistant position. On June 20, 2017 appellant filed a Form CA-2a claiming a recurrence of disability from work commencing May 5, 2017. She alleged that, after she completed her shift on May 5, 2017, her supervisor informed her that the employing establishment did not have work available within her restrictions. In a May 16, 2018 letter, a health and resource management specialist for the employing establishment, indicated that there were no changes to appellant's job duties and that there was work available on May 6, 2017. Appellant also filed several CA-7 forms claiming disability from work beginning August 5, 2017 and asserted that no work was available within her restrictions. On the reverse side of the January 23, 2018 CA-7 form the employing establishment's health and resource management specialist indicated that appellant was sent home because no more work was available.

The Board finds that the factual evidence of record is insufficient to determine whether appellant sustained a recurrence of disability due to a withdrawal of her light-duty position.[13] The employing establishment has provided conflicting information regarding whether work was available within appellant's work restrictions during the claimed period of disability. Accordingly, the evidence of record must be fully developed so that it contains accurate information regarding appellant's claim in order to determine whether she was unable to work beginning May 5, 2017 because of a change or withdrawal of her limited-duty assignment due to an employment injury.[14]

Is it well established that, proceedings under FECA are not adversarial in nature and, while the employee has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.[15]

Accurate information regarding whether appellant's limited-duty assignment was available during the claimed period of disability is essential to determine whether she sustained a recurrence of total disability.[16] This evidence is of the character normally obtained from the employing

[11] *J.D.*, Docket No. 18-0616 (issued January 11, 2019); *C.C.*, Docket No. 18-0719 (issued November 9, 2018); *Ronald A. Eldridge*, 53 ECAB 218 (2001).

[12] *E.M.*, Docket No. 19-0251 (issued May 16, 2019); *H.T.*, Docket No. 17-0209 (issued February 8, 2019); *Mary A. Ceglia*, Docket No. 04-0113 (issued July 22, 2004).

[13] *See M.W.*, Docket No. 20-0881 (issued January 13, 2021); *see also L.F.*, Docket No. 19-0519 (issued October 24, 2019).

[14] *See P.H.*, Docket No. 20-0039 (issued April 23, 2020); *D.M.*, Docket No. 18-0527 (issued July 29, 2019); *J.G.*, Docket No. 17-0910 (issued August 28, 2017); *M.A.*, Docket No. 16-1602 (issued May 22, 2017).

[15] *M.T.*, Docket No. 19-0373 (issued August 22, 2019); *B.A.*, Docket No. 17-1360 (issued January 10, 2018).

[16] *See K.T.*, Docket No. 17-0009 (issued October 8, 2019); *Y.R.*, Docket No. 10-1589 (issued May 19, 2011).

establishment and is more readily accessible to OWCP than to her.[17] On remand OWCP shall request that the employing establishment furnish documentation clarifying whether appellant's modified-duty assignment was available or had been withdrawn for the claimed period beginning May 5, 2017. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that the case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the April 16, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: April 23, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

[17] *J.T.*, Docket No. 15-1133 (issued December 21, 2015); *J.S.*, Docket No. 15-1006 (issued October 9, 2015).